

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC 20554

In the Matter of)	
)	
Federal-State Joint Board on Universal)	CC Docket No. 96-45
Service)	
)	
)	

**COMMENTS OF UNITED STATES CONFERENCE OF CATHOLIC BISHOPS,
ALLIANCE FOR COMMUNITY MEDIA, APPALACHIAN PEOPLE’S ACTION
COALITION, CENTER FOR DIGITAL DEMOCRACY, THE COMMUNITY
TECHNOLOGY INSTITUTE, CONSUMER ACTION, CONSUMER FEDERATION OF
AMERICA, CONSUMERS UNION, EDMONTON NEIGHBORHOOD COALITION,
THE MIGRANT LEGAL ACTION PROGRAM, THE NATIONAL COALITION FOR
THE HOMELESS, AND THE NATIONAL COMMUNITY VOICE MAIL FEDERATION**

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SUMMARY

In the Telecommunications Act of 1996 (“1996 Act”), Congress made clear that the policy of universal service was to make available to all the people of the United States, without discrimination, a rapid, efficient, nationwide and worldwide communications service. The 1996 Act requires that the Commission adopt rules to ensure non-discriminatory access to basic telecommunications services for all Americans at just, reasonable and affordable rates.

However, the current list of services supported by the Universal Service Fund (“USF”) is inadequate to ensure that all Americans receive telephone service, or at least essential telephone access to emergency services, at affordable rates. This is particularly important to many low-income people. In order to address this problem, USCCB *et al.* urge the Commission to broaden the definition of universal service to include services that will make telecommunications services available and affordable for all citizens.

First, the Commission should expand the list of core services to include soft dial tone service. This will help ensure that those who have had their local service disconnected still retain access to potentially lifesaving emergency services. The fact that only a few states currently provide soft dial tone service suggests that other states will not adopt the service without Commission action. Further, leaving to the states the decision whether to support soft dial tone will result in confusion and inconsistency. In an emergency situation, this widespread lack of support could result in serious consequences for the millions of Americans without telephone service.

Second, prepaid service should be added to the list of services that will be supported by universal service. While soft dial tone will be particularly important for those without telephone service, including prepaid calling plans could help by reducing the number of people without

telephone service. The addition of prepaid service as a core service would help people acquire telephone service in two ways. First, because eligible telecommunications carriers (“ETCs”) would be required to offer prepaid service, it would become more widely available. Second, the addition of prepaid service would allow some people who are eligible for Lifeline or Linkup support—but cannot get it because they do not have a permanent home—to obtain subsidies for prepaid service.

USCCB *et al.* have modified its prior proposal to include both wireless and wireline prepaid plans. The Joint Board was concerned that by adding only wireless prepaid service the effect on carriers would not be competitively neutral. The proposal detailed herein, however, is competitively neutral and also satisfies the Commission’s criteria when evaluating the definition of universal service under section 254(c)(1) of the 1996 Act.

The inclusion of these services would increase the number of people who have affordable telephone service and ensure access to emergency, health, educational and other essential services. Accordingly, USCCB *et al.* urge the Commission to include soft dial tone and prepaid service within the definition of services supported by the USF.

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**COMMENTS OF COMMENTS OF UNITED STATES CONFERENCE OF CATHOLIC
BISHOPS, *ET AL.***

The United States Conference of Catholic Bishops (“USCCB”), Alliance for Community Media, Appalachian People’s Action Coalition, Center for Digital Democracy, the Community Technology Institute, Consumer Action, Consumer Federation of America, Consumers Union, Edgemont Neighborhood Coalition, the Migrant Legal Action Program, the National Coalition for the Homeless, and the National Community Voice Mail Federation (“USCCB, *et al.*”),¹ through their counsel, the Institute for Public Representation, hereby submit comments, pursuant to the Notice of Proposed Rulemaking, released by the Commission on February 25, 2003, seeking comment on the Recommended Decision of the Federal-State Joint Board on Universal Service (“Joint Board”) regarding the definition of services eligible for the support of the federal universal service fund (“USF”).²

As further detailed below, USCCB, *et al.* strongly urge the Commission expand the definition of universal service to include soft-dial tone and prepaid calling.

¹ USCCB, *et al.* are religious and non-profit organizations that advocate for the interests of low-income individuals and their families.

² See *Federal-State Joint Board on Universal Service Seeks Comment on Review of the Definition of Universal Service*, Recommended Decision, 17 FCC Rcd 14095 (2002) (“*Recommended Decision*”).

BACKGROUND

Section 254(b) sets forth principles for the preservation and advancement of universal service.³ These principles include ensuring quality services “at just, reasonable, and affordable rates” and providing “[c]onsumers in all regions of the Nation, including low-income consumers and those in rural, insular, and high cost areas” with telecommunications and information services.⁴ Section 245(c) defines universal service as an “evolving level of telecommunications services that the Commission shall establish periodically under this section, taking into account advances in telecommunications and information technologies and services.”⁵

In the *First Report and Order*, the Commission defined the core services to be supported by universal service to include single-party service, voice grade access to the public switched network, DTMF signaling or its functional equivalent, access to emergency services, access to operator services, access to interexchange services, access to directory assistance, and toll limitation services for qualifying low-income consumers.⁶

On December 21, 2000, the Commission requested that the Joint Board “review the definition of the ‘core’ services supported by the Commission’s high-cost and low-income universal service support mechanisms under section 254(c)(1) of the Act.”⁷ In response, the Joint Board released a public notice seeking comment on the services that should be added to or removed from the list of core services.⁸ The *Public Notice* specifically sought comment on,

³ 47 U.S.C. § 254(b).

⁴ 47 U.S.C. § 254(b)(1), (b)(3).

⁵ 47 U.S.C. § 254(c)(1).

⁶ *Federal-State Joint Board on Universal Service*, Order, 12 FCC Rcd 8776, 8809 (1997) (“*First Report and Order*”).

⁷ *Federal-State Joint Board on Universal Service*, Order, 15 FCC Rcd 25257, 25258 (2000) (“*Referral Order*”).

⁸ *Federal-State Joint Board on Universal Service Seeks Comment on Review of the Definition of Universal Service*, Public Notice, 16 FCC Rcd 16155 (2001) (“*Public Notice*”).

among other things, whether soft dial tone, expanded area service, and prepaid calling plans should be added to the list of core services.⁹

USCCB *et al.* submitted comments and reply comments urging the Joint Board to recommend expansion of the definition of universal service to make telecommunications services available and affordable to more subscribers.¹⁰ Specifically, we sought support for soft dial tone, expanded area service, and functional substitutes for residential wireline service, such as prepaid wireless service and a combination of prepaid local usage and voice mail.¹¹

In July 2002, the Joint Board recommended against expanding the definition of services supported by federal universal service.¹² While the Board recognized that universal service is an evolving level of telecommunications services, it concluded that none of the proposed services sufficiently satisfied the statutory criteria contained in section 254(c).¹³ Under this section, the Commission must consider the extent to which those services or components: (A) “are essential to education, public health, or public safety;” (B) “have, through the operation of market choices by customers, been subscribed to by a substantial majority of residential customers;” (C) “are being deployed in public telecommunications networks by telecommunications carriers;” and (D) “are consistent with the public interest, convenience, and necessity.”¹⁴ As the Commission concluded in the *First Report and Order*, “all four criteria enumerated in section 254(c)(1) *must*

⁹ *Id.* This request grew out of the *Twelfth Report and Order*, which sought to promote telecommunications subscribership and infrastructure deployment within American Indian and Alaska Native tribal communities. *Federal-State Joint Board on Universal Service; Promoting Deployment and Subscribership in Unserved and Underserved Areas, Including Tribal and Insular Areas*, Twelfth Report and Order, Memorandum Opinion and Order, and Further Notice of Proposed Rulemaking, 15 FCC Rcd 12208, 12238, n.153 (2000) (“*Twelfth Report and Order*”).

¹⁰ Comments of USCCB *et al.*, filed Nov. 5, 2001, at 2 (“USCCB *et al.* Comments”); Reply Comments of USCCB *et al.*, filed Jan. 4, 2002 (“USCCB *et al.* Reply”).

¹¹ *Id.* at i.-ii.

¹² *Recommended Decision*, 17 FCC Rcd at 14097-98.

¹³ *Id.*

¹⁴ 47 U.S.C. § 254(c)(1)(A)-(D).

be considered, but not each necessarily met, before a service may be included within the definition of universal service.”¹⁵

In these comments, USCCB *et al.* urge the Commission to amend the definition of core services to include soft dial tone and prepaid calling. We believe that in recommending against inclusion of soft dial tone, the Joint Board failed to sufficiently appreciate the importance of nationwide access to emergency services, and that its concerns about the lack of competitive neutrality were misplaced. To address the Joint Board’s concerns regarding the lack of competitive neutrality in our prior proposal, which included prepaid wireless as a functional alternative to conventional, wireline telephone service, we have amended our proposal to simply include prepaid calling.¹⁶

I. THE COMMISSION SHOULD ADD SOFT DIAL TONE TO THE LIST OF CORE SERVICES SUPPORTED BY UNIVERSAL SERVICE

In comments filed on November 5, 2001, USCCB *et al.* demonstrated that soft dial tone service meets all four criteria for inclusion as a supported service.¹⁷ Nonetheless, the Joint Board recommended against including this service because of three main concerns. First, noting that several states, including California, Vermont, and New York had already implemented successful soft dial tone programs, it concluded that states “may be in the best position to determine whether soft dial tone or soft dial tone is necessary and to establish attendant programs.”¹⁸ Second, the Joint Board found that the record was “unclear” regarding the impact

¹⁵ See *First Report and Order* at 8809 (emphasis added).

¹⁶ Although we still believe that it would be in the public interest to include EAS, see USCCB *et al.* Comments at 13-20, the Joint Board did not find the record sufficient, and we have no additional information to present. *Recommended Decision* at ¶ 35.

¹⁷ USCCB *et al.* Comments at 4-5.

¹⁸ *Recommended Decision* at ¶ 28.

that supporting this service would have on the size of the USF.¹⁹ Finally, it was concerned that the inclusion of soft dial tone “*might* be inconsistent with the principle of competitive neutrality.”²⁰ We show below how the Joint Board’s concerns were misguided.

A. Nationwide, Universal Access to Emergency Services is Essential

Since only a few states currently provide soft dial tone service, it is unlikely that others will adopt the service without Commission action. Moreover, leaving the decision whether to support soft dial tone to the states will result in confusion and inconsistency. The ability to contact emergency services by dialing 911 is clearly of national importance. Across the nation more than 95 million 911 phone calls are made every year, averaging 260,000 calls a day.²¹ With the increased threat of terrorism, such access is more important than ever.

Soft dial tone service is essential for connecting those without telephone service to emergency services. Millions of Americans do not have telephone service, and with the economic problems our nation is facing, many more people are likely to lose their telephone service.²² In an emergency, not having a phone can have serious consequences. A study conducted in 1993 found that of those without telephone service, 65% relied on a pay phone,

¹⁹ *Id.* at ¶ 29.

²⁰ *Id.* at ¶ 31 (emphasis added). The Joint Board also mentioned that some commenters had asserted that soft dial tone could not be included because customers do not subscribe to that service. However, the Joint Board found it unnecessary to resolve this question. *Id.* at ¶ 32. Access to emergency 911 service is a supported service even though it is not subscribed to by residential subscribers. Soft dial tone services are the functional equivalent of emergency access for households without telephone service. Thus, the fact that customers do not subscribe to soft dial tone services does not preclude their inclusion in the definition of universal service.

²¹ *Revision of the Commission’s Rules to Ensure Compatibility With Enhanced 911 Emergency Calling Systems*, 11 FCC Rcd 18676, 18678-79 (1996) (“*E911 Order*”).

²² The reasons for lack of service vary. A 1993 survey found that of non-customers, 30% said the phone company disconnected their phone; 11% said they decided to stop having phone service because of cost reasons. Twenty-eight percent have never tried to get phone service. See Field Research Corporation, funded by GTE and Pacific Bell, mandated by California Public Utilities Commission, *Affordability of Telephone Service: A Survey of Customers and Non-Customers*, Docket No. 96-45, at 12 (1993) available at http://gullfoss2.fcc.gov/prod/ecfs/retrieve.cgi?native_or_pdf=pdf&id_document=6009048951 (“*Affordability of Telephone Service Study*”).

while 34% used a friend's or neighbor's telephone.²³ In case of an emergency, only 34% had access to a telephone in the same building, while 65% had to go elsewhere.²⁴ Today it may be even more difficult to reach a telephone in an emergency since there are increasingly fewer pay phones available.²⁵ This lag time could have serious consequences for emergency response times in cases of trauma or acute illness.²⁶

1. Nationwide, emergency access is an important tool to guard against terrorism.

As the threat of terrorism increases, it is more important than ever to have universal access to law enforcement officials. American citizens are encouraged to call 911 if they see suspicious activity²⁷ and the 911 system is an integral part of the government's system of detecting and fighting acts of terrorism.²⁸ Yet many without telephone service may be unable to call 911 or decide not to.

The Commission has already implemented regulations that require wireless carriers to connect all 911 calls made from wireless handsets regardless of subscription status.²⁹ The Commission's emphasis and commitment in assuring that people have access to 911 service would seem to encompass both wireless carriers and wireline carriers. The fact that wireless

²³ *Id.* at 10.

²⁴ *Id.*

²⁵ USCCB *et al.* Comments at 24-25. The Joint Board acknowledges the "decline in the overall number of payphones in the United States and that this decline may have had a detrimental impact on access to essential phone services." *Recommended Decision* at ¶ 49.

²⁶ People who have a heart attack and suffer ventricular fibrillation (abnormal heart rhythm) are much more likely to survive when the response time is short. When the emergency response time is 12 minutes, the survival rate is 5%. When the response time is lowered to seven minutes, 30% survive; at six minutes, 45% survive. National Center for Early Defibrillation, *The Problem of Sudden Cardiac Arrest*, http://www.early-defib.org/03_01_01.html (last visited April 13, 2003).

²⁷ Penny Owen, *Domestic Threats Increase with Chance of War*, Daily Oklahoman, at 1A (March 18, 2003).

²⁸ In fact, the number of 911 calls received is used as a measure attack severity and can assist in detecting if a chemical or biological attack has occurred. FEMA, *Managing the Emergency Consequences of Terrorist Incidents, Interim Planning Guide for State and Local Governments*, at 10, tbl. 1, July 2002, <http://www.fema.gov/pdf/onp/managingemerconseq.pdf> (last visited April 12, 2003).

²⁹ *Revision of the Commission's Rules To Ensure Compatibility with Enhanced 911 Emergency Calling Systems*, 12 FCC Rcd 22665, 22682 (1997) ("E911 Revision Order").

access to 911 has been federally regulated shows both the importance of 911 and the viability of adding soft dial tone service to the list of supported services.

2. Soft dial tone is especially important given the mobility in American society.

Nationwide soft dial tone service would be especially valuable to the millions of people who move to a new residence each year.³⁰ Since it can take several days or even weeks to get settled into a new home and arrange for phone service, many are forced to go without phone service for some time.³¹ Soft dial tone service would provide access to emergency services during this transition period.³²

The record shows that people who do not have telephone service tend to be more mobile than their counterparts with telephone service. An examination of reasons why people did not have telephone service in California found that high mobility correlated with the lack of service more than any other factor.³³ Of those who did not have phone service, 52% had lived at their current residence for less than a year, compared to 27% of telephone customers in the area with similar demographics.³⁴

While soft dial tone service could provide life-saving assistance to Americans moving into a new residence, its use depends on people knowing that the service exists. Like the 911

³⁰ From March 2000 to 2001, approximately 38 million Americans moved to a new home in the United States. Of these, nearly 7.7 million moved to a different state. U.S. Census Bureau, *General Mobility, by Region, Sex, and Age*, tbl. 1, available at <http://www.census.gov/population/socdemo/migration/cps2001/tab01.pdf>.

³¹ It may also take time for the local telephone company to install service. Sprint customers waited an average 3.2 days for telephone service to be installed. See Industry Analysis and Technology Division, Wireline Competition Bureau, FCC, *Quality of Service of the Local Operating Companies*, tbl. 1(a) (rel. Jan. 30, 2003), available at http://www.fcc.gov/Bureaus/Common_Carrier/Reports/FCC-State_Link/QualSvc/qual01.pdf (2003 *Quality Study*). Installation, however, can often take much longer than three days. Some people had to wait weeks for phone service after SBC Communications took over Ameritech. Mark Hornbeck, *Ameritech Service Beefs Falling Off*, The Detroit News, at 1C (Nov. 24, 2000). One man had to wait a year for phone service in Colorado. Deborah Solomon, *Service a Hang-Up For All The Baby Bells*, The Denver Post, at K6 (July 9, 2000).

³² In some cases, soft dial tone service can also expedite the process of getting phone service since the line can be connected directly to the business office of the local service provider.

³³ *Affordability of Telephone Service Study* at 9.

³⁴ *Id.*

program itself, soft dial tone service must be available nationwide and it must be publicized. Adding soft dial tone services to the list of supported services would accomplish these objectives.

3. Adding soft dial tone service to the list of supported services will not take the flexibility away from the states to implement soft dial tone service.

In recommending against adding soft dial tone service to the list of supported services, the Joint Board correctly recognized that states have closer ties than the federal government to public safety agencies and local carriers.³⁵ It overestimated the impact, however, that the inclusion would have on the states' ability to implement their individual soft dial tone service programs.

The addition of soft dial tone service to the list of supported services would simply mean that telecommunications providers would be required to offer soft dial tone service to receive federal universal service support. Adding soft dial tone to the list of core services in no way dictates to the states the method by which they are to implement the service within their own borders. States would still interact with emergency service providers, and local carriers would still be able to tailor their soft dial tone program to best suit the needs of the individual state. Adding soft dial tone service to the list of supported services simply ensures that all Americans would have access to this important service.

B. The Size of the Universal Fund Will Not Be Adversely Affected by the Addition of Soft Dial Tone

While USCCB *et al.*, the California Public Utilities Commission and other commenters have demonstrated that adding soft dial tone would have a minimal impact on the size of the

³⁵ *Id.*

USF, others have claimed a large impact.³⁶ The Joint Board did not recommend including soft dial tone in part “because the ultimate cost of soft dial tone or warm line services to the fund is unknown at this time.”³⁷

While USCCB *et al.* share the Joint Board’s concern about the continuing viability of the USF,³⁸ we do not believe that soft dial tone will be costly to implement. The states’ experience with soft dial tone service demonstrates that its inclusion would have a *de minimus* impact on the fund. In fact, the Vermont Department of Public Service, in implementing its Continuous Emergency Access program, noted that carriers *save* money because it is cheaper to reprogram the class of service as soft dial tone than to disconnect the line and then reconnect it at a later date.³⁹ Further, even if the program poses some additional costs, the public interest benefits of providing emergency 911 access to millions of Americans currently without service justify the slight cost increase.

Finally, if the Commission is concerned that the cost of soft dial tone service is unclear, then the Commission should not at the outset reject the service. Rather, the Commission should conduct an analysis to better determine the possible costs before making its determination.

C. Adding Soft Dial Tone Service to the List of Core Services is Consistent with the Principle of Competitive Neutrality Because Both Wireline and Wireless Carriers Can Functionally Provide Soft Dial Tone Service

The Joint Board also expressed concern that adding soft dial tone service to the list of supported services might violate the principle of competitive neutrality because

³⁶ USCCB *et al.* Comments at 10-13; USCCB *et al.* Reply Comments at 9-10.

³⁷ *Recommended Decision* at ¶ 29.

³⁸ Indeed, many of these commenters have also been participating in the USF assessment methodology proceeding.

³⁹ State of Vermont, Public Service Board, Direct Testimony of William Shapiro on Behalf of the Vermont Department of Public Service, Docket No. 5713, Phase II (April 8, 1997).

currently, wireless providers are not capable of providing a continuous connection to public safety answering points for all unactivated handsets. Moreover, the Commission recently concluded that it is technically infeasible at this time for wireless carriers to develop and implement technical solutions that would provide public safety agencies with a call-back number for calls from non-initialized phones. Consequently, by adding soft dial tone or warm line service to the list of core services, wireless carriers would not longer be able to qualify as ETCs.⁴⁰

The Joint Board's conclusion, however, overlooks the fact that competitive neutrality is not an absolute requirement in considering whether a new service should be supported. Wireless carriers do offer the functional equivalent of the most important aspect of soft dial tone service—the ability to place an emergency call. Moreover, it now appears that they may also have the capability of providing call back numbers.⁴¹

The concept of competitive neutrality was proposed by the Joint Board and adopted by the Commission pursuant to section 254(b)(7); this allows the Commission to determine “[s]uch other principles as ... are necessary and appropriate for the protection of the public interest, convenience, and necessity.”⁴² As explained in the *First Report and Order*, “competitive neutrality means the universal service support mechanisms and rules neither unfairly advantage nor disadvantage one provider over another, and neither unfairly favor or disfavor one technology or another.”⁴³

The Commission recognized that “given the complexities and diversity of the telecommunications marketplace it would be extremely difficult to achieve strict competitive

⁴⁰ *Recommended Decision* at ¶ 31.

⁴¹ It appears that the Joint Board may have used a broader definition of soft dial tone service than the Commission has used in the past. As the Commission noted when it determined that soft dial tone numbers should be treated as administrative numbers it stated, “Soft dial tone is simply a functionality that permits a caller to call emergency services and sometimes receive incoming calls.” *Numbering Resource Optimization*, 15 FCC Rcd 7574, 7591-92 (2000). In contrast, the Joint Board defined soft dial tone services as enabling “an otherwise disconnected line to be used to contact emergency services (“911”) and the local exchange carrier’s central business office.” *Recommended Decision* at ¶ 27. USCCB *et al.* believe that the ability to contact the local exchange carrier’s central business office is not essential to the performance of the service.

⁴² *First Report and Order* at ¶ 46.

⁴³ *Id.* at ¶ 47.

neutrality.”⁴⁴ In fact, the Commission has waived the requirement of competitive neutrality when it finds it is in the public interest to do so. For example, the Commission decided to include single-party service in the list of core services, even though it could not be provided by wireless carriers.⁴⁵ Instead, the Commission looked to the functionality of the telecommunications service, concluding that “to the extent that wireless providers use spectrum shared among users to provide service, we find that *wireless providers offer the equivalent of single-party service* when they offer a dedicated message path for the length of a user's particular transmission.”⁴⁶

The Commission should take a similar approach here. Regardless of whether or not wireless carriers can offer continuous service, they can functionally provide the equivalent of soft dial tone by ensuring that an otherwise disconnected wireless phone can be used to contact emergency services.⁴⁷ Under current FCC regulations, wireless carriers are required to ensure that disconnected wireless handsets have the ability to dial emergency services.⁴⁸ This means that all calls made from a cellular phone must be passed on even if the service has been disconnected.⁴⁹ Thus, wireless carriers already offer a service that is functionally identical to wireline soft dial tone service.

Moreover, it appears that the Joint Board’s concern that it was technically infeasible for wireless carriers to provide public safety agencies with a call-back number for calls from non-

⁴⁴ *Id.* at ¶ 48.

⁴⁵ *Id.* at ¶ 62.

⁴⁶ *Id.* (emphasis added).

⁴⁷ *Recommended Decision* at ¶ 27. The Joint Board cites United States Cellular’s Comments as authority for its “continuous service” rationale, and United States Cellular’s Comments state, “Even though wireless providers cannot provide perpetual service to 911 from a wireless phone, all callers can dial 911 from an operational handset.” Thus, United States Cellular recognizes that wireless carriers can provide the functional equivalent of soft dial tone service. United States Cellular Comments, filed Nov. 5, 2001, at 7.

⁴⁸ *E911 Revision Order* at 22681-83. Commission regulations require all 911 calls to be forwarded to PSAPs without validation regardless of their subscription status. *Id.* at 22682.

⁴⁹ *See id.* at 22681-83.

initialized phones is no longer true.⁵⁰ The Order cited by the Joint Board for this proposition⁵¹ was subsequently stayed after a proposed solution to the call back problem was found.⁵² A new technology, known as the Annex C solution, has been introduced that allows non-initialized phones to be called back by emergency services.⁵³ While the Annex C solution and similar technological solutions for call-back capability have yet to be fully implemented in the wireless industry,⁵⁴ the Commission has previously given federal support to eligible telecommunications carriers (ETCs) while they made the necessary technological improvements to offer the supported service.⁵⁵ A similar approach is warranted here.

In sum, the Commission should designate soft dial tone as a “core” service to be supported by the USF. It is important to the health and safety of all Americans that nationwide access to emergency services be available, even for people who do not have telephone service. Adding this service will not be unduly costly, nor will it favor or disfavor any provider or technology.

⁵⁰ Non-initialized phones are phones that are not registered for service with any wireless carrier. See *Revision of the Commission’s Rules to Ensure Compatibility with Enhanced 911 Calling Systems*, Report and Order, 17 FCC Rcd 19012 (2002) (“*Non-Initialized Phones E-911 Revision Order*”).

⁵¹ *Revision of the Commission’s Rules to Ensure Compatibility with Enhanced 911 Calling Systems*, Report and Order, 17 FCC Rcd 8481 (2002).

⁵² *Non-Initialized Phones E-911 Revision Order* at 19012-13.

⁵³ The Annex C solution uses the wireless handset’s Electronic Serial Number (“ESN”) or International Mobile Station Equipment Identity (“IMEI”) to create a surrogate number from which the caller can be reached. *Id.* at 19013.

⁵⁴ Verizon Wireless is already requiring its phones to be capable of providing Annex C technology. *Id.* at 19016.

⁵⁵ Carriers incapable of providing E911 service, toll limitation and single party service, but were otherwise eligible to receive support, were granted a period of time to make the necessary upgrades to carry the service. See *First Report and Order*, 12 FCC Rcd at 8827. When the Commission adopted these core services it concluded, “the public interest requires that we allow a reasonable period during which otherwise eligible carriers may complete network upgrades required for them to begin offering certain services that they are currently incapable of providing.” *Id.* at 8826.

II. PREPAID SERVICE SHOULD BE ADDED TO THE LIST OF CORE SERVICES THAT WILL BE SUPPORTED BY UNIVERSAL SERVICE

While soft dial tone will be especially important for people who do not have telephone service, including prepaid calling plans could help by reducing the number of people without telephone service. The Commission initially asked the Joint Board to “consider the advisability of including prepaid calling plans within the definition of supported services” in the *Twelfth Report and Order*.⁵⁶ There, the Commission asked the Joint Board to “examine whether support for such plans may give carriers sufficient financial incentive to extend service to low-income individuals whose service has been disconnected for failure to pay long distance charges and to waive past due charges for such individuals as a condition of receiving this support.”⁵⁷

Although the Joint Board’s *Public Notice* invited comment on whether prepaid calling plans should be included,⁵⁸ apparently none of the commenters directly addressed this question.⁵⁹ USCCB *et al.* asked for inclusion of prepaid wireless service as a substitute for residential wireline service for people who could not obtain wireline service.⁶⁰ The Joint Board, however, stated that this proposal failed to satisfy the principle of competitive neutrality.⁶¹ The Board was concerned that ETCs that use wireline technologies would be ineligible for federal support because they could not provide wireless service. The result of including only wireless prepaid service, the Board predicted, would be a reduction in the number of entities able to provide all of the core services in high-cost areas.⁶²

⁵⁶ *Twelfth Report and Order* at 12208, n. 153.

⁵⁷ *Id.*

⁵⁸ *Public Notice* at 16157.

⁵⁹ *Recommended Decision* at 14111.

⁶⁰ USCCB *et al.* Comments at 23-31.

⁶¹ *Recommended Decision* at 14111.

⁶² *Id.*

USCCB *et al.* have taken into account the Joint Board's concerns about competitive neutrality and now propose that prepaid calling for both wireline and wireless service be included within the definition of core services. By making prepaid calling a core service, many people who have been unable to get conventional postpaid telephone service will be able to obtain and retain telephone service. Further, people who are eligible for Lifeline or Linkup support but do not have a permanent home should be able to obtain subsidies for wireless prepaid service.

A. Many People Cannot Acquire Telephone Service Due to Credit Problems

The guiding policy of universal service is “to make available, so far as possible, to all the people of the United States, without discrimination . . . a rapid, efficient, Nation-wide and world-wide . . . communications service.”⁶³ Nonetheless, some 6% of Americans still lack basic telephone service.⁶⁴ As we have detailed in earlier comments, some low-income people who are eligible for Lifeline service are unable to obtain service because they lack a permanent residence. Many other people cannot obtain conventional telephone service because of a poor or nonexistent credit history.

It has been estimated that 2% of residents nationwide cannot obtain a home telephone due to credit problems.⁶⁵ In certain neighborhoods in California, as many as 4% of the residents

⁶³ 47 U.S.C. § 151.

⁶⁴ The Commission stated in the *Twelfth Report and Order* that the “penetration levels among particular areas and populations are significantly below the national average.” *Twelfth Report and Order* at 12212 (citing FCC, Common Carrier Bureau, Telephone Subscribership in the United States, Report at 28 (rel. June 22, 2000)). In the latest report of telephone subscribership conducted by the Census Bureau, the telephone penetration rate was 79.8% for households with annual incomes below \$5,000, while the rate for households with incomes over \$75,000 was 99.3%. See FCC, Wireline Competition Bureau, Telephone Subscribership in the United States, Report at 1 (rel. April 10, 2003).

⁶⁵ Prime Companies, Inc., available at <http://www.primecompanies.com/company.php> (last visited April 12, 2003) (“*Prime Companies Web Site*”).

cannot obtain a home telephone due to poor credit.⁶⁶ Many of those currently without telephone service have had service in the past, but were disconnected due to non-payment (usually of long distance charges)⁶⁷ and cannot get telephone service until they have paid off the debt.⁶⁸

The difficulty of obtaining telephone service due to credit problems has been exacerbated by the increasingly sophisticated ability of carriers to target attractive customers and deny service to those with non-existent or poor credit history.⁶⁹ For example, the National Consumer Telecommunications Data Exchange (“NCTDE”)—a company comprised of carriers who provide the names of residential customers who have bad credit—has created a large database that is actively used by carriers.⁷⁰ Carriers have increasingly used this database, which as of May of 2002 had more than 500,000 unpaid collection accounts.⁷¹

⁶⁶ *Id.*

⁶⁷ In the *First Report and Order*, the Commission prohibited carriers from disconnecting local service for non-payment of charges incurred by toll charges, stating it was persuaded by the “studies indicating that disconnection for non-payment of toll charges is a significant cause of low subscription among low-income consumers.” *First Report and Order* at ¶ 28. The Fifth Circuit reversed the policy, however, deciding that the Commission did not have jurisdiction to impose the no-disconnect plan. *Texas Office of Pub. Util. Counsel v. FCC*, 183 F.3d 393, 424 (5th Cir. 1999). As a result, many more low-income customers do not have telephone service. Prepaid service will be another mechanism to ensure that fewer low-income people will be without telephone service. Moreover, most people without phone service do not know about toll blocking and other programs for low-income consumers. *Affordability of Telephone Service Study* at 26. If the Commission decides not to include soft dial tone and prepaid service, then USCCB *et al.* urge the Commission to improve the awareness of toll limitation services for qualifying low-income consumers.

⁶⁸ See, e.g., Karin Schill, *Dial-a-deal*, News and Observer (Raleigh, NC) (Jan. 31, 1999). A woman, who had her calling card stolen, could not afford to pay the resulting bill. She disputed the charges, but the company would not remove them. Consequently, she went without telephone service. She later became ill and couldn’t call 911 for an ambulance and realized she couldn’t go without a phone. *Id.* at p. 2. Another woman couldn’t pay a \$500 long-distance bill, which was run up, in part, by other people using her phone. She too was disconnected by her carrier. *Id.* at 3. A study by Field Research Corporation, jointly funded by GTE and Pacific Bell and mandated by California Public Utilities Commission, was conducted to determine the reasons for not having telephone service by surveying both customers and non-customers. The study found 30% of non-customers had their service disconnected by the phone company. Four percent of non-customers had attempted to obtain phone service, but were denied service. *Affordability of Telephone Service Study* at 12.

⁶⁹ See generally, Cal. Consumer Watchdog Group Filed Complaint with Cal. PUC, Communications Daily, Telephony (March 14, 2002); Margo McCall, *Sprint PCS Pummeled for Shortfall*, Wireless Week (Sept. 30, 2002).

⁷⁰ *Id.*

⁷¹ See Shira Levine, *Risky Business: Bad Credit? No Credit?*, Advantstar Communications, at 4 (May 1, 2002). Sprint PCS, for example, has also tightened credit-screening requirements and increased deposit requirements. It has also vowed to “step up its pursuit of so-called ‘prime customers’ and adjust pricing plans to boost growth. McCall, *Sprint PCS Pummeled for Shortfall*, Wireless Week, at 2 (Sept. 30, 2002).

Those who have credit problems are a broad and diverse group of people. For instance, college students, who may have little income and no credit history have difficulty obtaining traditional residential telephone service. Individuals who are recently divorced or have recently immigrated may also have difficulty establishing a sufficient credit history. Victims of identification theft are another group of people who may experience temporary credit problems.⁷² With the current economic problems being faced by our country, we can expect that more and more people will at sometime in their life have problems with their credit.

Unfortunately, in many cases, people with credit problems or other people who could benefit from prepaid service, such as temporary residents and military personnel, have been subject to price gouging and other unscrupulous practices by “phone sharks”—companies that resell local telephone service on a prepaid basis.⁷³ For example, prepaid carriers in Florida have been charging an average of \$50 a month, plus one-time hookup fees of about \$40, significantly more than the \$29 per month charged by the local exchange carrier under a traditional postpaid plan.⁷⁴

B. Prepaid Service Offers a Way for People with Credit Problems to Obtain Telephone Service

Including prepaid service within the list of core services would help many people obtain and keep telephone service. Prepaid service, as its name suggests, does not require a commitment to a monthly service plan, unlike conventional telephone services.⁷⁵ There are

⁷² See generally FTC, Consumer Protection Bureau, *ID Theft: When Bad Things Happen to Your Good Name* (Sept. 2002), available at <http://www.ftc.gov/bcp/online/pubs/credit/idtheft.pdf> (last visited April 12, 2003). This is an FTC/Consumer Protection Bureau web site with information regarding the implications of identity theft.

⁷³ One such company, E-Z tel, reportedly advertises on almost a daily basis on “The Jerry Springer Show.” See *Schill* at 1.

⁷⁴ See Cherie Jacobs, *Phone Service with a Bite*, The Tampa Tribune, at 2 (Feb. 3, 2002). See also *Schill* at 1.

⁷⁵ See e.g., BuyPhone.com, *BuyPhone.com Prepaid (CallPlus) Global PCS*, at <http://www.buyphone.com/prepaid/roaming.asp> (“BuyPhone Web Site”) (last viewed on Apr. 13, 2003). BuyPhone is a company that distributes all the necessary phones and accessories for AT&T Wireless service. To see a

generally no contracts, credit checks or monthly bills.⁷⁶ Because people pay prior to receiving service, carriers are not subjected to the risk of non-payment.

The addition of prepaid service as a core service would help in two ways. First, because ETCs would be required to offer prepaid service, it will become more widely available. Moreover, since under 214(e)(1), an ETC must advertise all the services supported by federal universal service,⁷⁷ the public will become more aware of this service. Additionally, increased competition in this service would help eliminate the problem of price gouging.

Second, the addition of prepaid service would allow some people who are eligible for Lifeline or Linkup support, but cannot get it because they do not have a permanent home, to obtain subsidies for prepaid service. The Joint Board found that only 38% of those eligible for Lifeline received Lifeline support in 2002.⁷⁸ By requiring ETCs to offer prepaid calling, some additional percentage of Lifeline-eligible persons should be able to take advantage of the subsidy to obtain telephone service. Of course, the subsidy could only be used for one service (whether wireline or wireless).

Washington, D.C. list of prepaid phone plans access:

<http://www.buyphone.com/prepaid/planfind.asp?FindPlan=Find+Plan&areacode=202> (last visited April 12, 2003).

⁷⁶ See e.g., BuyPhone Web site, *BuyPhone.com Prepaid*. In order to initiate prepaid wireless service, for example, one can buy a prepaid phone and accessories and a card with a certain number of minutes online or at a store (some are distributed directly from the service providers and other carriers require that one purchase from a retail store or an online distributor). One can buy a card typically worth from 10 minutes to several hundred minutes; this card is then used to input the requisite information into the phone, which then displays the number of minutes one has available. See *id.* Wireline prepaid plans operate somewhat similarly to wireless prepaid plans. The main difference is that one does not need to go to a store to purchase a phone card, but instead prepays the carrier that switches on the service. However, like the wireless prepaid plans, once the minutes are depleted on your residential landline phone, one may not place outgoing calls or receive incoming calls, except for emergency calls. In addition to major wireline carriers, CLECs provide prepaid wireline service. By entering into resale agreements with ILECs to provide this service. See e.g., *Prime Companies Web Site*, at <http://www.primecompanies.com/company.php>.

⁷⁷ 47 U.S.C. 214(e)(1).

⁷⁸ Between 1984 and 1997, the telephone penetration rate for low-income households in states with Lifeline/Link-Up assistance increased by an average of 0.5% per year. By comparison, the penetration rate for low-income households in states without Lifeline/Link-Up assistance increased by an average of 0.25% per year. *Federal-State Joint Board on Universal Service*, Recommended Decision, FCC 03J-2, ¶ 7, 13 (rel. April 2, 2003) (“*Lifeline Recommended Decision*”).

C. The Commission has Authority to Include Prepaid Service within the Definition of Supported Services

When considering whether services should be included in the definition of universal service, the Commission must consider the four factors identified in section 254(c).⁷⁹ Prepaid service generally satisfies these factors.

First, under section 254(c)(1)(A), the Commission must consider the extent to which these services or components “are essential to education, public health, or public safety.”⁸⁰ As shown above, adding prepaid service to the list of supported services will allow many people who otherwise would not have telephone service to obtain basic telephone access and all of the education, health and safety benefits that go along with it.

Second, the Commission must consider whether the prospective additional service has been subscribed to by a “substantial majority of residential customers.”⁸¹ Prepaid service meets this factor because it provides the functional equivalent of basic telephone service, which is subscribed to by 95% of households in the U.S.⁸² But even if prepaid calling is regarded as a separate service, a large percentage of wireless customers currently subscribe to prepaid plans. In the Seventh CMRS Report, analysts estimated that approximately 8 to 10 percent of U.S. wireless phone users subscribed to prepaid plans in 2001.⁸³ Moreover, the prepaid wireline business is also experiencing substantial growth.⁸⁴

⁷⁹ 47 U.S.C. § 254(c)(1)(A)-(D).

⁸⁰ 47 U.S.C. § 254(c)(1)(A).

⁸¹ 47 U.S.C. § 254(c)(1)(B).

⁸² FCC, Wireline Competition Bureau, Telephone Subscribership in the United States, Report at 1 (rel. April 10, 2003).

⁸³ *Implementation of Section 600 2(B) of the Omnibus Budget Reconciliation Act of 1993*, Annual Report and Analysis of Competition market Conditions with Respect to Commercial Mobil Services, Seventh Report, 17 FCC Rcd 12985, 13015 (2002) (“*Seventh Annual CMRS Competition Report*”).

⁸⁴ See *Pactolus Deployments Reach SIP-based, Prepaid Services Milestone with 500 Million Minutes of Use*, Business Wire, at 1 (March 12, 2003). Pactolus Communications Software Corporation, a leading provider of SIP-based service solutions, announced that it has processed more than 500 million minutes of prepaid voice traffic in wireline carrier networks since the start of 2002. *Id.* Experts estimate that about 1 million people use prepaid telephone companies. Cherie Jacobs, *Phone Service with a Bite*, Tampa Tribune, at 1 (February 3, 2002).

Third, the Commission must examine the extent to which the service has been “deployed in public telecommunications networks by telecommunications carriers.”⁸⁵ In the recent *Seventh Annual CMRS Competition Report*, the Commission identified six major wireless carriers (Cingular Wireless, Nextel, AT&T Wireless, Verizon Wireless, Sprint PCS, and T-Mobile).⁸⁶ All offer prepaid service plans.⁸⁷ Press reports indicate that many wireline carriers also offer prepaid plans.⁸⁸

Under the fourth factor, the Commission must consider whether inclusion of the service serves the public interest, convenience and necessity. Included within this analysis is the principle of competitive neutrality.⁸⁹ The Joint Board was concerned that requiring “an ETC to provide a wireless service would render carriers that utilize wireline technologies ineligible for textual support.” This could “drastically reduce” the number of ETCs and leave many communities without basic service.⁹⁰ Our current proposal addresses this concern. The inclusion of prepaid services would not be biased toward either wireless or wireline ETCs because both types of carriers would be able to offer prepaid service. Wireline ETCs would not be required to offer wireless prepaid service nor would wireless ETCs be required to offer prepaid wireline service.

Finally, while prepaid service substantially complies with the statutory criteria in section 254, the Commission has stated that not all of these criteria must be met before a service may be

⁸⁵ 47 U.S.C. § 254(c)(1)(C).

⁸⁶ *Seventh Annual CMRS Competition Report* at 17 FCC Rcd at 12997.

⁸⁷ See Dan Meyer, *Carriers Target Youth Market via Prepaid, Unlimited Local Plans*, RCR Wireless News, at 1-2 (July 22, 2002); see also Reinhardt Krause, *Some U.S. Wireless Carriers Seek a Change of Momentum*, Investor’s Business Daily (April 7, 2003).

⁸⁸ The industry is primarily dominated by small companies, such as NOW Communications, Smoke Signals and 1-800-Reconex, and each company typically has approximately 1,000 to 2,000 customers. Many of these prepaid phone companies rent phone lines from the dominant carriers. Jacobs at 1. See also *Bell Atlantic Brings Prepaid To Wireline*, Communications Today (May 4, 2000) (describing Bell Atlantic’s new plan to offer prepaid service).

⁸⁹ *First Report and Order* at 8790.

⁹⁰ *Recommended Decision* at 14111.

included within the definition of universal service.⁹¹ The inclusion of prepaid service is in the overall public interest because it will help ensure that this service will become more widespread and affordable. This will, in turn, help people with low-incomes, credit problems and/or no permanent residence get telephone service. Thus, the inclusion of prepaid service will further the primary purpose of universal service: providing telephone service to all Americans.

CONCLUSION

For the foregoing reasons, USCCB *et al.* respectfully urge the Commission to expand the definition of “core” services to be supported by the USF to include soft dial tone and prepaid calling.

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⁹¹ *First Report and Order* at 8809.